

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

**BELFAST & MOOSEHEAD
RAILROAD, et al.,**

Plaintiffs

v.

PETER DUFOUR, et al.,

Defendants

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Civil No. 90-0114 P

RECOMMENDED DECISION ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The plaintiff railroads in the instant case, challenging the constitutionality of the Maine Railroad Personnel Act ("Act"), 32 M.R.S.A. §§ 4140-50, seek summary judgment as to Counts I-IV¹ of their First Amended Complaint.² On February 8, 1991 this court (Carter, C.J.) affirmed my recommendation that the defendants' motion to dismiss be partially granted.³ Two claims survived the motion to dismiss: (1) the assertion in Count I that federal law preempts the Act; and (2) the allegation in Count IV that the Act imposes an undue burden on interstate commerce. I find it necessary to

¹ The plaintiffs agreed not to press Count V, requesting an *Ex parte Young* injunction, so long as the defendants continued to refrain from prosecution under the Act. Memorandum in Opposition to Defendants' Motion to Dismiss at 49-50 n.14. However, the plaintiffs reserved the right to reactivate Count V if the state should later initiate prosecution for violations occurring during the period the state suspended enforcement. *Id.*

² The First Amended Complaint was further amended by the substitution of ¶ 49. *See* Endorsement dated 10/24/90 to Motion to Amend With Incorporated Memorandum of Law.

³ *See* Recommended Decision on Motion by Defendants to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) or, in the Alternative, for Judgment on the Pleadings Pursuant to Fed. R. Civ. P. 12(c) ("Recommended Decision"); Order Affirming Recommended Decision on Motion by Defendants to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) or, in the Alternative, for Judgment on the Pleadings Pursuant to Fed. R. Civ. P. 12(c).

reach only the preemption claim in recommending that this court grant the plaintiffs' motion for summary judgment.

I. SUMMARY JUDGMENT STANDARDS

Fed. R. Civ. P. 56(a) provides in relevant part that "[a] party seeking to recover upon a claim . . . or to obtain a declaratory judgment may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." Such motions must be granted if

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

In determining if this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give that party the benefit of all reasonable inferences to be drawn in its favor."

Ortega-Rosario v. Alvarado-Ortiz, 917 F.2d 71, 73 (1st Cir. 1990) (citation omitted). "Once the movant has presented probative evidence establishing its entitlement to judgment, the party opposing the motion must set forth specific facts demonstrating that there is a material and genuine issue for trial." *Id.* (citations omitted); Fed. R. Civ. P. 56(e); Local R. 19(b)(2). A fact is "material" if it may affect the outcome of the case; a dispute is "genuine" only if trial is necessary to resolve evidentiary disagreement. *Ortega-Rosario*, 917 F.2d at 73.

II. FACTUAL CONTEXT

The parties dispute no material fact relevant to determination of the preemption claim. The plaintiff railroads⁴ are subject to the regulatory authority of the Federal Railroad Administration ("FRA"). Plaintiffs' Statement of Material Facts Not in Dispute Pursuant to Local Rule 19 ("Plaintiffs' Statement") & 1; Statement of Defendants Pursuant to Local Rule 19(b)(2) ("Defendants' Statement") & 1. The railroads, all of which operate in Maine, are subject to the challenged Act and rules promulgated thereunder. Plaintiffs' Statement && 2,4; Defendants' Statement && 2,4. The defendants, with the exception of the attorney general of the state of Maine, are members of the Maine Board of Licensure of Railroad Personnel and are responsible, *inter alia*, for enforcing the Act. Plaintiffs' Statement & 5; Defendants' Statement & 5.

III. LEGAL ANALYSIS

For the reasons discussed in my Recommended Decision I find that the FRA has preempted the challenged Act and accompanying rules. *See* Recommended Decision at 12-16. The Act and rules offend the Supremacy Clause, art. VI, ' 2, of the United States Constitution. I therefore recommend that this court declare the Act and its accompanying rules unconstitutional and enjoin their enforcement. Finally, I recommend that the plaintiffs be awarded costs pursuant to Fed. R. Civ. P. 54(d).

IV. CONCLUSION

⁴ The plaintiff railroads are Belfast & Moosehead Railroad, Bangor & Aroostook Railroad, Boston & Maine Railroad, Canadian Pacific Limited, Maine Coast Railroad, New Hampshire Northcoast Corporation, Springfield Terminal Railway, St. Lawrence & Atlantic Railway and Maine Central Railroad.

For the foregoing reasons, I recommend that the court *GRANT* the plaintiffs' motion for summary judgment as to Count I of the First Amended Complaint.

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 1th day of March, 1991.

David M. Cohen
United States Magistrate Judge